1950.

File No. O. Ex-Communication / 50

Legal Dept.

A **BRANCH**

Subject:—Opinion under the Bombay Prevention of Ex-Communication Act 1949.

E (1)

File No. O. Ex-Communication / 50

438-A

Gen. 194

C O N T E N T S.

Legal Department File No. O.Excommunication/ 1950.

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5-Cs.
M.V.V.
9/6.

R.I. No.2182 dated 8.2.50.

Submitted.

This is a proposal from the Addl. D.M.Thana for the grant of sanction for the prosecution of the accused mentioned by him for excommunicating the complaint, Sha Savarkhan Sanjinkhan of Vasind under the Bombay Prevention of Excommunication Act, 1949. M.D. states that though the offence took place sometime in July 1949 since the offence is of a continuing nature there is no difficulty in prosecuting the accused after the Act came into force on 1.11.1949. That Deptt. also states that prohibition from attending the mosque would amount to excommunication within the meaning of the Act. The draft sanction order is shown to the R. L. A.

2. A revised sanction order is appended. Invitation to attend mosque or to mix up with other persons, not allowing others to visit him or invitation to attend funeral obsequies are all social privileges and not legal rights and therefore there is no remedy at law. But excommunicating Mr. Sha Shavarkhan Sanjinkhan wrongfully and preventing him from offering prayers at the mosque are legally enforceable rights and privileges by a suit of civil nature (see Explanation to sec.2(b) of the Bombay Prevention of Ex. Act and commentary below sec. 9 of Mulla's Civil Procedure Code) . These two ingredients of the offence are accordingly stated in the revised sanction order.

Sd/- P.S. Madkarni,
22/2.
D.S.(CR).

I agree

Having regard to the definition given in sec. 2(b) "excommunication" would be a continuing offence.

Sd/-
27/2.

4-Cs.

M.V.V.
8/6.

The constitutional position has been fully examined in the Additional Secretary's note of 2-9-1949 which was written in reply to the Govt. of India's objections on the Prevention of Excommunication Bill. As pointed out ~~him~~ in that note, the provisions of the Bombay Prevention of Excommunication Act, 1949, are not repugnant to Article 26 of the Constitution.

2. In his complaint at p.7 ante, the complainant states that the leaders of his community have ex-communicated him without any reason, and then goes on to state specific instances of the action taken against him viz. the accused. The Additional Magistrate in his letter of 18th January 1950 at p.5 ante specifies the various acts committed by the accused and sums up the whole thing by saying "Thus the accused have excommunicated the complainant". It is not clear whether the complainant has been excommunicated within the meaning of section 2 of the Act. Sec. 2 defines "excommunication" as meaning expulsion of a person from any community of which he is a member depriving him of rights and privileges which are legally enforceable by a suit of civil nature by him or on his behalf as such member. Under this definition there must first be expulsion of a person from a community and such expulsion should result in depriving the person of rights and privileges which are legally enforceable by a suit of civil nature. If the accused commits certain acts such as not allowing the person to visit a mosque, those would not necessarily by themselves amount to excommunication. Whether a person has been excommunicated or not cannot be gathered from the mere acts committed by the accused such as those mentioned by the complainant. Before a person is held guilty of an offence under ~~xxx~~ sec. 4, it must be proved that there was in fact an expulsion of the complainant from the community to which

P.T.O.

he belongs and that can be generally evidenced by a resolution passed by the members of the community at meeting held for the purpose of excommunicating the person. If there is sufficient evidence to prove expulsion of a person from a community and such expulsion results in depriving him of rights and privileges which are legally enforceable by a suit of civil nature, there will be no difficulty in securing conviction of the person or persons who commit the act amounting to or in furtherance of excommunication. Beefore sanction is granted under section 6 of the Act for prosecution of any person it will be necessary to see that there is at least a prima facie case against the accused. This seems to be the first case of sanction under the Prevention of Excommunication Act and before giving sanction, it is desirable that Government should know the exact facts. The Additional District Magistrate may therefore be asked to find out the exact circumstance in which the complainant was excommunicated.

Sd/-
25/4/

R.L.A.

" Excommunication" means the expulsion of a person from any community of which he is a member, depriving him of rights and privileges which are legally enforceable by a suit of civil nature by him or on his behalf as such member. Expulsion and deprivation of rights are the two main ingredients With a view to satisfy Government that a prima facie case has been made out -

4-Cs.

M.V.V./8.6.

Office of the R.L.A.

"Excommunication" means the expulsion of a person from any community of which he is a member depriving him of rights and privileges which are legally enforceable by a suit of civil nature by him or on his behalf as such member. (See section 2(h) of the Bombay Prevention of Ex-communication Act, 1949). Expulsion and deprivation of rights are the two main ingredients. With a view to satisfy Government that a prima facie case has been made out the D.M. should be requested to forward the evidence on both points. The allegations in the complaint are not precise. The exact circumstances in which the complainant was expelled and the kind of rights and privileges legally enforceable by a suit of a civil nature of which he was deprived should be specified.

Sd/- P.M.LAD,
1/5.

Remembrancer of Legal Affairs.

U.R. to H.D. No.5964, dated the 2nd May 1950.

L-Cs.

M.V.V.
9/6.

R.I. No. 6314, dated 13/4/1950.

Submitted.

M/S. Abdul Hussein Jivaji and others Bohra inhabitants of Dhanduka, District Ahmedabad in their representation dated 28/12/1949 have alleged that they have been ex - communicated from the Bohra community and requested Government to take action against the wrong - doers. The acts or series of acts on which the appli - cants believe that they have been ex - communi - cated are that (1) they were not called in any one of the 15 caste dinners; (2) that inspite of their invitations on two occassions (one auspicious and the other inauspicious)) none of the caste members responded to their customary invitations, and (3) that inspite of repeated requests the Mullaji Saheb has not replied to them. The Addl. D.S.P. Ahmedabad is of opinion that only a social wrong has been done to the applicants. The H.D. agrees with this view and proposed to inform the applicants that such an act would not come within the purview of the Bombay Prevention of Ex- communication Act, 1949. Before issue of the proposed reply the papers are referred to the R.L.A.

* Pl. see paras 6 and 11 of the communication.

3. A Civil Court has not power by its decree to compel the members of a caste to invite a casteman to dinner on to any ceremony . ——— (Raghunath V. Janardan (1891) 15 Bom. 599; Sadharam V. Sudharam (1869) 3. B.L.R. A.C. 91 ; Mayashankar V. Harishankar (1869) 10 Bom. 661)

Consequently the acts complained of by the applicants, namely that they were not invited for caste dinners and that the caste - men did not respond to their invitations for some ceremonies would not be rights or privi -

P.T.O.

ing lodges legally enforceable by them. There is, therefore, no "ex-communication" within the meaning of section 2(b) of the Bombay Prevention of Ex- communication Act, 1949.

The view taken by the H.D. is correct. Papers may be seen and returned.

Sd/- Nadkarni.
18/4.

A.L.R. R.T.K./18.4

R.L.A. P.H.Lad/18.4

Additional Sec.may also see

The view taken by H.D. is correct.

Sd/-
19/9.

U.O.R. to H.D. No.5378, dated 20/4/1950.

(Pl. also see R.L.A's No.9567, dt.8/7/50).

4-Cs.

M.V.V.
9/5.

R.I.No.20653/15/12/49.

Submitted.

2. It appears that the Pathare Prabhu Charities is an institution which manages the charities and trust properties belonging to the Pathare Prabhu Community. Under rule 45 of the Rules governing the p.p.Charities the Secretaries of the Charities are to maintain a register of adult members of the Community and under rule 46 the decision of the Managing Committee as to membership is final. On 6.6.1943 the P.P.Charities have made a new rule 4(d) to the following effect.

"Members means a person male or female who is born in wedlock between a Pathare Prabhu father and a Pathare Prabhu mother and should not include a Pathare Prabhu who married outside the Pathare Prabhu Caste. A member marrying or marries outside the Pathare Prabhu caste shall cease to be a member of the Pathare Prabhu Charities."

It is complained by one Mr. S.V. Rao that as a result of this rule the managing committee of the Charities have removed the names of those marrying outside the caste and as such these persons have been deprived of their rights of attending and participating in the meeting of the charities and benefits out of the charity properties. He considers that this amounts to ex-communication and offends the Bombay Prevention of Ex-Communication Act, 1949 which came into force with effect from 1.11.1949. The H.D. considers that section 3 of the Act has not retrospective effect and that no action can be taken for ex-communication already done and has raised the following points for R.L.A's considerations:-

(1) Whether expulsion from the membership of the charities in question after the 1.11.1949 would constitute a breach of the provisions of the Act;

(2) If so.-

(a) Whether the members expelled before 1/11/1949 can enforce their right of membership after the date, the excommunication being invalid and of no effect under section 3 of the Act;

P.T.O.

(b) Whether new members not satisfying all the prescribed conditions but born in the particular community can legally demand their enrolment as members of the charities in question if they so desire; and

(c) Whether the refusal on the part of the authorities of the charities to entertain the application of persons coming under the categories indicated at (a) and (b) above would be actionable under the provisions of the Act.

Section 3 of the Bombay Prevention of Ex-Communication Act, 1949 provides that notwith-standing anything contained in any law, custom or usuage for the time being in force, to the contrary, no ex-communication of a member of any community shall be valid and shall be any effect. Section 4 provides penalty for any acts which amounts to or is in furtherance of the ex-communication. Penal laws are very strictly construed and in a absence of any indication to the contrary the provisions of sections 3 or 4 cannot be construed as having retrospective operation (cf. Addl. Secretary's opinion No. 9803 dt. 20.10.1948).

"Excommunication" is defined in section 2(b) of the Bombay Prevention of Excommunication Act, 1949 to mean the expulsion of a person from any community of which he is a member depriving him of his rights and privileges which are legally enforceable by a suit of a civil nature by him or on his behalf.

To show that a particular act amounts to excommunication it must be shown that (1) The act amounts to expulsion of the person from any community; and that (2) by such action the person has been deprived of his rights and priviledges, which are legally enforceable by a suit of a civil nature by him or on his behalf. The rule framed by the Pathare Prabhu Charities in 1943 seeks to exclude from membership of the Charities such members as have married with persons of different-castes which would as a consequence has disentitled the excluded members from participating in the meeting and other benefits of the charities.

Even though every member of the P.P. Community is a member.

Office of the A.L.A.

It is not the practice of the A.L.A. to advise private individuals; nor would it be desirable for Government to do so. Shri Rao may therefore be asked to seek legal advice from his lawyers. The questions raised by the H.D. may be considered if sanction of the State Government is sought for under section 6 of the Bombay Prevention of Excommunication Act, 1949.

.Sd/- P.M.Lad,
17/6.

Remembrancer of Legal Affairs.

U.R to H.D No.8349 , dated the 19th June 1950.

4-Cs.

M.V.V.
9/6.

Office of the R.L.A.

The R.L.A. is unable to follow the difficulty of the District Magistrate of Thana. It is the complainant's duty to produce the evidence on the points specified by the R.L.A. and for that purpose it is not necessary to take cognisance of the offence. If the complainant is unable to produce evidence on these points, it cannot be said that he has made out a case for sanction. The compalinant should, therefore, be invited by the District Magistrate to produce all the material on the points specified in R.L.A's opinion.

Sd/- P.M.Lad,
5/7.
Remembrancer of Legal Affairs.

U.R TO H.D. No. 9338, dated the 5th July 1950.

4-Cs.

M.V.V.
9/6.

Submitted.

The facts of the case in brief are as follows:-

One Parvatibai K. Lidkar of Arawi village has complained that on 3-2-50 she had gone for picture with her children and on her return she found that the tiles of her house had been removed and her trunk, containing certain ornaments and cash, was robbed. The next day she informed the police of this theft and stated that she suspected one S.H.Patil & G.D. Ambulkar, both residing in the same village. When this became known to the respective fathers of the last mention two persons, they called together the community members and passed a resolution ex-communicating Parvatibai from the Bhandari community. This resolution was communicated through one R.S.Patil to all the Bhandaris in the Village of Arawi, by beat of drum and all ------ Bhandaris were asked not to have any relationship with her. The penalty for the breach is Rs.15/-. Similarly, anybody giving information of person contravening the resolution is offered Rs.5/- as reward.

H.D. is of the opinion that the act complained viz. Prohibiting persons of the community from having anything to do with the complaint, will not come under 'excommunication' as defined in section 2(b) of the Bombay Prevention of Excommunication Act, 1949 and therefore the question of giving sanction under section 6 does not arise.

P.T.O.

R.L.A. has been requested to advise whether the view taken by the H.D. is correct.

"Excommunication" means the expulsion of a person from any community of which he is a member depriving him of rights and priveleges which are legally enforceable by suit of civil nature by him or on his behalf as such member.———— Expulsion and depriviation of rights are the two main ingredients". (R.L.A.'s opinion No.5964 dated 2/5/50/)

* p.9 of L.D. file 0. Prevention of Excommunication/50.

In the present case, though the complainant is prepared to bring withnesses to prove that she was actually ex-communicated by resolution passed at a meeting of the community members on 8/2/50, the rights of which she has been deprived are merely social rights, which cannot be enforced by her in a court of law. As such, it will not amount to excommunication within the definition of that term in cl.(b) of sec.3 of the B.P. of E. Act, 1949(cf. R.L.A's opinion No. 5378 dt.20.4.50).

} p.15 file - do -

Reply may be -

A 'The view taken by H.D. at A on p.16 ante is correct.' A

S.B./6.7

A.L.R. Sd/-R.T.K.
6/7

R.L.A. Sd/- P.M.LAD/6.7

U.O.R. to H.D. No.9567, dated 8th July 1950.

4-Cs.

M.V.V.
9/6.

Office of the H.L.A.

The view taken by the Home Department is correct.

Sd/-P.H.Lad,
28/7.

Remembrancer of Legal Affairs

U.R. to H.D. No.10725, dated the 28th July 1950.

4-Cs.
M.V.V./9.6

Office of the R.L.A.

The complainant has been excommunicated for over 13 years or so, and the only item which has the semblance of a civil right is the use of caste utensils and caste middle yadia. Although this may fall within the letter of the law, a prosecution does not seem expedient. The applicant can enforce his rights by proper civil proceedings.

Sd/- P.M.Lad,
27/9.

Remembrancer of Legal Affiars.

U.R. 38 H.D. No.13709, dated the 28th September 1950.

4-Cs.

M.V.V.
9/6.

Office of the R.L.A.

The Home Department view (page 15) is correct. Since the ex-communicated members have not been deprived of any right or privilege which is enforceable by a suit of civil nature, a successful prosecution is not legally feasible.

Sd/- P.M.Lad,
1/11.

Remembrancer of Legal Affairs.

U.R. to H.D. No.15301, dated the 2nd Nov. 1950.

4-Cs.
M.V.V.
9/6

Office of the R.L.A.

The Home Department view appears to be correct. Items at Nos. (1) to (4) at page 27 do not constitute rights and privileges of civil nature which are enforceable by suit and of which the complainant was deprived.

Sd/- P.M.Lad,
25/9.

Remembrancer of Legal Affairs.

U.R. to H.D. No.13598, dated the 26th September 1950.

A-Cs.

M.V.V.
9/6.

Prosecution.
Sanction for — of Sri.Shaikh Mohiuddin Shaikh Abdul and four others of Vasind, Taluka Shahapur,District Thana, — Under Bombay Prevention of Excommunication Act, 1949.

GOVERNMENT OF BOMBAY.
Home Department.

Bombay Castle, November 1950.

ORDER.

Whereas on or about the.....of..... 19....
*
.....
are alleged to have excommunicated Sri Sha Shavarkhan Sangiakhan of Vasind, Taluka Shahapur, District Thana, and in furtherance of the said excommunication are alleged to have wrongfully prohibited the said Sha Shavarkhan Sangiakhan from offering prayers in the mosque at .....

* State names of all persons.

And Whereas it appears to the Government of Bombay that the said .....
have thereby committed an offence punishable under section 4 of the Bombay Prevention of Excommunication Act, 1949 (Bom. XLII of 1949);

Now, therefore, in exercise of the powers conferred by clause (b) of section of the said Act, the Government of Bombay is pleased to grant sanction for the prosecution of the said .....
.....
for the said offence.

* State names of all persons.

By order of the Governor of Bombay,

Secretary to Government.

4-Cs.

M.V.V.
9.6

Office of the R.L.A.

From the further statements recorded by the Additional District Magistrate, Thana, it appears that the applicant has been prevented and is still being prevented from entering the mosque to offer his prayers and thus there is a prima-facie case under section 4 of the Bombay Prevention of Excommunication Act.

2. A draft sanction order is sent herewith.

Sd/- P.H.Lad

Remembrancer of Legal Affairs.

U.R. to H.D. No.15658, dated the 8th. Nov. 1950.

4-Cs.

H.V.V.
9/6.

Office of the R.L.A.

Since the applicant is not deprived of any right or privilege which is legally enforceable by a suit of civil nature this is not a fit case for granting sanction for prosecution.

Sd/- P.M.Lad,
8/11.

Remembrancer of Legal Affairs.

U.R. to M.D. No.15722, dated the 11th November 1950.

A.Cs.

M.V.V.
9/6.

Office of the R.L.A.

Seen and returned.

Sd/- P.M.LAD,
29/11.

Remembrancer of Legal Affairs.

U.R. to M. D. No. 16987, dated the 30th November 1950.

4-Cs.
M.V.V.
9/6.